IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5896 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

1 Whether Reporters of Local Papers may be allowed to see the judgment ? **No**

2 To be referred to the Reporter or not ? **No**

3 Whether their Lordships wish to see the fair copy of the judgment ? **No**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **No**

5 Whether it is to be circulated to the civil judge ? **No**

SHIVLALBHAI VAIKUNTH & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

Appearance :
MR KL DAVE for Petitioners
MR JK SHAH, AGP for Respondent(s) : 1 to 3
MR VIMAL M PATEL for Respondent: 4

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 28/06/2007

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant petition under Articles 226 and 227 of the Constitution, the petitioners have prayed to quash the order dated June 12, 1996, passed by the Deputy Collector and Land Acquisition Officer, Rehabilitation (Irrigation), Junagadh, by which the award dated February 10, 1995, made under Section 11 of the Land Acquisition Act, 1894 (“the Act” for short) in LAQ Case No.46 of 1989 came to be corrected. The petitioners have further prayed to direct the Reference Court to decide Land Acquisition Reference Case Nos.1257 of 1999 and 1258 of 1999 on the basis of original award dated February 10, 1995, and not on the basis of the corrected award dated June 12, 1996.

2. The two petitioners, i.e.

Mr.Shivlalbhai Vaikunth Sankaliya and Mr.Bhailal Vaikunth, claim to be the owners of Survey No.11/1 of village Bela, District: Junagadh. According to them, the said survey number was admeasuring 1 Hectare – 49 Are – 73 sq.mtrs. The Executive Engineer, Junagadh Irrigation Scheme, proposed to the State to acquire the lands of village Bela for the public purpose of construction of Ojat-2 Irrigation Scheme. On consideration of the said report, the State Government was satisfied that the lands of village Bela mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on February 1, 1990. The owners, whose lands were proposed to be acquired, were served with notices. They had filed their objections. After

considering their objections, a report, as contemplated by Section 5A(2) of the Act was forwarded by the Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of village Bela mentioned in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Ojat-2 Irrigation Scheme. Therefore, a declaration under Section 6 of the Act was made which was published in the official gazette on January 7, 1993. The interested persons were thereafter served with notices for determination of compensation payable to them. The interested persons appeared before the Land Acquisition Officer and were heard by him. After considering the materials placed before him, the Land Acquisition Officer made award under Section 11 of the Act on

February 10, 1995. A copy of the award made under Section 11 of the Act is produced by the petitioners at running page 31 of the petition. A perusal of the award makes it very clear that petitioner No.1, i.e. Shivlalbhai Vaikunth Sankaliya remained present before the Land Acquisition Officer on April 24, 1994, and made a statement before the Land Acquisition Officer that he was not in possession of 1 Hectare – 13 Acres – 66 sq.mts. of land out of Revenue Survey No.11/1 of village Bela. However, schedule to the award indicated that compensation was awarded to the petitioners. Therefore, the respondent No.4, i.e. Mr.Chhaganbhai Vithalbhai filed an application dated March 21, 1996, stating that his Survey No.11/1 was acquired for the public purpose and as the said survey number had totally submerged, he should be granted

compensation by correcting the errors in award dated February 10, 1995, made under Section 11 of the Act. A copy of the said application is produced by the petitioners at Annexure-B to the petition. On receipt of the said application, the Land Acquisition Officer issued notice dated May 30, 1996, to the persons who were interested and likely to be affected if application was allowed. By the said notice, the interested persons, including the petitioners, were called upon to remain present for hearing before him on June 10, 1996. However, in the notice produced by the petitioners, the date mentioned for hearing the interested persons is June 20, 1996. The case of the petitioners is that before June 20, 1996, the award dated February 10, 1995, came to be corrected on June 12, 1996, without hearing the petitioners. The effect of

correction made in the award is that now the respondent No.4 is entitled to compensation in respect of the land bearing Survey No.11/1 of village Bela. The case of the petitioners is that the petitioners demanded copy of the award from the Land Acquisition Officer and the same was supplied to them on December 20, 2004. According to the petitioners, they were also informed that other interested persons were paid compensation and the petitioners were advised to approach the Court for redressal of their grievances, if any, by communication dated January 28, 2005, a copy of which is produced at Annexure-G to the petition. The case of the petitioners is that the application for correction of errors in the original award was made by the respondent No.4 beyond period of six months contemplated by Section 13A of the Act and therefore, the Land

Acquisition Officer had no jurisdiction to correct the errors. What is maintained by the petitioners is that before correcting the errors, no opportunity of being heard was given to the petitioners and therefore, the correction is bad in law. The petitioners have stated that the errors in the original award dated February 10, 1995, were corrected by an order dated June 12, 1996, i.e. after a period of fifteen months, which is contrary to the scheme envisaged by the Act and therefore, the corrected award deserves to to be set aside. The grievance made by the petitioners in the petition is that without verifying or checking the record which indicated that one Mr.Vitthal Raja, who was the original owner of Survey No.11/1, had sold the said land to one Mr.Vitthaldas Chagandas Thakara by a registered deed dated September 11, 1974, the

correction is ordered which is bad in law. The petitioners have maintained that there was neither clerical error nor arithmetical error which had crept in the award and therefore, exercise of power of correction of the errors is bad in law. It is also the case of the petitioners that in the notice issued by the Land Acquisition Officer, incorrect names of the petitioners were mentioned and therefore, the correction made in the award should be treated as illegal. According to the petitioners, in Hissa Form No.4, the names of the petitioners are mentioned as the owners of Survey No.11/1 and therefore, correction, which is contrary to the same, should be set aside. Under the circumstances, the petitioners have filed the instant petition and claimed reliefs to which reference is made earlier.

3. The petition was placed for preliminary hearing before the Court on June 29, 2006, and after hearing the learned counsel for the petitioners, notice was ordered to be issued to the respondents.

4. On service of notice, respondent No.4 has filed reply controverting the averments in the petition. In the reply, it is mentioned that originally, land bearing Survey No.11/1 admeasuring 19 Acres – 25 Gunthas belonged to Mr.Vitthal Raja regarding which mutation entry No.47-A in Village Form No.6 was recorded on November 3, 1957. A copy of the said entry is produced by the respondent No.4 along with his reply which is to be found on page 137 of the compilation. It is further stated by the respondent No.4 that name of brother of Mr.Vitthal Raja is Mr.Vaikunth Raja, who has two sons,

namely Mr.Chagan Vitthal, i.e. the respondent No.4 and Mr.Balu Vitthal, and that Mr.Vitthal Raja sold two acres of land to one Mr.Jayantilal Mahidhar, for which necessary entry was recorded in Village Form No.6 on January 13, 1988, and on application being made by Mr.Vitthal Raja, land admeasuring 10 Acres – 01 Gunthas was mutated in his name, i.e. respondent No.4. In order to substantiate this assertion, the respondent No.4 has produced necessary entries which are to be found on pages 137 and 138 of the compilation. Thus, what is sought to be explained by filing the reply is that the total holding of Mr.Vitthal Raja was of 19 Acres and 25 Gunthas which was reduced to 5 Acres and 24 Gunthas and that even today, the land admeasuring 4 Acres and 37 Gunthas stands mutated in the name of Mr.Vitthal Raja. It is further mentioned in the reply that Mr.Vitthal

Raja expired on August 17, 1996, and therefore, the land admeasuring 4 Acres and 37 Gunthas would be inherited by his legal heirs and representatives. It is asserted in the reply that at no point of time, Mr.Vitthal Raja had sold any part of land bearing Survey No.11/1 to the petitioners nor there is entry indicating that the land was ever sold by Mr.Vitthal Raja to any of the petitioners nor any sale-deed was ever executed by Mr.Vitthal Raja in favour of any of the petitioners and as the petitioners have no title to the property, the Land Acquisition Officer was justified in correcting the original award. What is pointed out in the reply is that there is considerable delay on the part of the petitioners in challenging the order dated June 12, 1996, by which errors in the original award dated February 10, 1995, came to be corrected and therefore, on the

ground of delay and latches also, the petition should be dismissed.

5. It may be mentioned that no reply has been filed by any of the respondents No.1 to 3 controverting the averments made in the petition.

6. This Court has heard Mr.K.L.Dave, learned counsel for the petitioners as well as Mr.J.K.Shah, learned Assistant Government Pleader for the respondents No.1, 2 and 3 and Mr.Vimal Patel, learned counsel for the respondent No.4, at length and in great detail. This Court has also considered the documents forming part of the petition.

7. The plea that the Land Acquisition Officer had no power to correct errors in the award made under Section 11 of the Act beyond period of six months and therefore, the correction of errors made in the award should be set aside

has no substance. Section 13A of the Act reads as under:

*"[**13A. Correction of clerical errors, etc. --** (1) The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:*

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered as an arrear of land revenue.]"

A bare reading of the above quoted provision makes it very clear that the Collector may, at any time, but not later than six months from the date of the award or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical

mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority. The learned counsel for the petitioners has informed this Court that References were made to the District Court in the year 1999 and registered as Land Acquisition Reference Case Nos.1257 of 1999 and 1258 of 1999. Before that, the respondent No.4 had made necessary application for correction of errors in the award and claimed compensation which was allowed and the original award made under Section 11 of the Act was corrected by order dated June 12, 1996. Thus, the Land Acquisition Officer has corrected errors in the award before making References under Section 18 of the Act which cannot be termed as barred by limitation contemplated by Section 13A of the Act.

The plea that Section 13A of the Act empowers the Land Acquisition Officer to correct only clerical or arithmetical mistakes but does not empower him to modify the award in a manner which would entitle another person to claim compensation and therefore the correction in the award should be set aside has also no substance. The language used by the Legislature is that the Collector has power to correct any clerical or arithmetical mistakes in award or errors arising therein. This provision is not analogous to Section 152 of the Code of Civil Procedure, 1908. The powers conferred on the Land Acquisition Officer are wide in nature and any error noticed in the award can be corrected if good ground is made out. This power is conferred on the Land Acquisition Officer to do substantial justice to the party

aggrieved and cannot be read in a narrow manner as suggested by the learned counsel for the petitioners. The proviso appended to sub-section (1) of Section 13A further stipulates that no correction which is likely to effect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter. The proviso thus implies that the power to correct the award is not only confined to correction of clerical or arithmetical mistakes but any error arising in the award, of course, subject to hearing the persons who are likely to be affected prejudicially. Under the circumstances, the plea that the correction made in the award travels beyond the scope of Section 13A of the Act and therefore, should be set aside, cannot be upheld and is hereby rejected.

8. The next contention urged by the learned counsel for the petitioners that no opportunity of being heard was given to the petitioners as the date of hearing was fixed by the Land Acquisition Officer on June 20, 1996, before which the award made was corrected on June 12, 1996, and therefore, the corrected award should be set aside is devoid of merits. It is true that in the notice dated May 30, 1996, copy of which is produced by the petitioners at Annexure-C to the petition, it is mentioned that the date of hearing was fixed on June 20. However, a glance at the said notice makes it very evident that the figure `20' is overwritten on figure `10'. Thus, this seems to be a case of tampering with the date mentioned in the notice regarding which no explanation worth the name is offered by the petitioners in the petition.

During the course of hearing of the petition, Mr.J.K.Shah, learned Assistant Government Pleader, made a statement that he was instructed to state before the Court that the date of hearing of the matter was fixed by the Land Acquisition Officer on June 10, 1996, and not on June 20, 1996. Thereupon, the Court wanted to know from him as to on whose instructions such a statement was made. In reply to the query of the Court, the learned Assistant Government Pleader had sought permission to leave the Court to enable him to contact the concerned officer. After contacting Mr.Bachubhai Virjibhai Kotad, who is Deputy Collector, Land Acquisition and Rehabilitation (Irrigation), Junagadh, Mr.J.K.Shah, learned Assistant Government Pleader, stated at the Bar that the date of hearing fixed by the Land Acquisition Officer was June 10, 1996, and not June

20, 1996, and that he would produce the necessary communication to be received from the said officer on the record of the petition. During the course of hearing of the petition, necessary communication was received by the learned Assistant Government Pleader and produced before the Court which is ordered to be taken on the record of the petition. It indicates that hearing of the application submitted by the respondent No.4 was fixed on June 10, 1996, and not on June 20, 1996, as claimed by the petitioners. This Court has no reason to disbelieve the statement made by the learned Assistant Government Pleader that hearing of application submitted by the respondent No.4 was fixed on June 10, 1996, as the same is supported by the contents of the communication received from the Competent Authority. Under the circumstances, the Court will have to

proceed on the footing that the hearing of the matter was fixed by the Land Acquisition Officer on June 10, 1996 and not on June 20, 1996, as claimed by the petitioners. The record does not indicate that the petitioners remained present before the Land Acquisition Officer on the specified date. Therefore, the plea that the correction made in the award is contrary to the principles of natural justice cannot be accepted and is hereby rejected.

9. The contention that without checking the record, the correction was made by the Land Acquisition Officer in the original award and therefore, the corrected award should be set aside is devoid of merits. It may be mentioned that the claim of the petitioners is that the original owner of Survey No.11/1 was one Mr.Vitthal Raja who had sold the same to Mr.Vitthaldas

Chaganlal Thakara by a registered deed dated September 11, 1974, from whom the petitioners had purchased the land. However, in grounds-B and C of the memorandum of Special Civil Application No.5896 of 2006, the petitioners have admitted that no sale-deed was ever executed by Mr. Vitthaldas Chaganlal Thakara in their favour. What is claimed in the petition is that an agreement to sell was executed but the same was destroyed due to heavy floods and therefore, sale-deed could not be executed though an agreement to sell was executed in the year 1982. This claim of the petitioners does not inspire confidence of this Court at all. In fact, no document such as sale-deed or revenue record in the form of 7/12 extracts or Village Form No.6 or 8, etc. worth the name, is produced by the petitioners on the record of the petition which would indicate that they

are the owners of Survey No.11/1 of village Bela. As the petitioners have failed to establish prima-facie their title to Survey No.11/1, this Court is of the firm opinion that the instant petition at the instance of the petitioners is not maintainable and liable to be dismissed. The record never indicated that the petitioners were owners of Survey No.11/1 and therefore, it would be wrong to say that relevant record was ignored by the Land Acquisition Officer while allowing the application for correction of errors noticed in the original award.

10. The contention that incorrect names were mentioned in the notice dated May 30, 1996, and therefore, the correction made in the award should be set aside has also no substance. The fact that the above mentioned notice was received by the petitioners is not in dispute

before this Court. In the said notice, survey numbers were also mentioned including Survey No.11/1 and name of petitioner No.2, i.e. Bhailal Vaikunth was clearly mentioned. So also, name of the petitioner No.1 was mentioned to be “Shivlal Vaikunth” in the said notice. Probably what is sought to be contended before the Court is that the name Shivlalbhai Vaikunthbhai should have been mentioned in the notice. On the facts and in the circumstances of the case, this Court is of the opinion that the notice did not mislead any of the petitioners at all even if it is assumed for the sake of argument that wrong names were mentioned and nothing prevented the petitioners from appearing before the Land Acquisition Officer to point out the relevant facts to him. Under the circumstances, the plea based on mention of wrong names of the petitioners in the notice dated May

30, 1996, cannot be accepted and is rejected.

11. It is relevant to notice that though the errors in award were corrected by the Land Acquisition Officer on June 12, 1996, the instant petition is filed in the year 2005, i.e. roughly after a period of ten years for which no satisfactory explanation is forthcoming from the petitioners. Even if it is assumed for the sake of argument that the petitioner No.2 has become insane whereas the petitioner No.1 was suffering from migraine, it is difficult to conclude for this Court that the delay caused in filing the instant petition is satisfactorily explained. The record would indicate that at least by communication dated January 28, 2005, the petitioners were informed that their remedy was to approach the Court for redressal of

their grievance. After receipt of the said communication, the petition was filed on May 9, 2005, and got circulated for hearing before the Court on June 29, 2006. The unexplained delay on the part of the petitioners in approaching the Court under Article 226 of the Constitution would disentitle them from claiming discretionary reliefs from the Court. On the facts and in the circumstances of the case, the Court is of the opinion that the on the ground of delay in instituting the instant petition, the petitioners are liable to be non-suited.

12. The correction of errors made in the award by the Land Acquisition Officer is based on relevant materials produced by the respondent No.4. The correction of errors is completely in consonance with the scheme envisaged by Section 13A of the Act. No illegality in the

corrected award is pointed out by the learned counsel for the petitioners which would warrant interference by this Court under Article 226 of the Constitution.

13. The net result of the above discussion is that this Court does not find any merits in the petition and the petition is liable to be dismissed.

14. For the foregoing reasons, the petition fails and is dismissed. Notice issued is discharged. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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